

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEBORA NOVAKOWSKI,

CIVIL DIVISION

Plaintiff,

NO. 04-356E

v.

Judge Sean J. McLaughlin
Electronically Filed

ELAINE CHAO, SECRETARY OF LABOR,
and the UNITED STATES DEPARTMENT
OF LABOR,

Defendants.

PLAINTIFF'S AMENDED PRE-TRIAL STATEMENT

AND NOW, comes the Plaintiff, Debora Chiz Novakowski, by and through her attorney John R. Linkosky, Esquire and John Linkosky & Assoc., and files this Amended Pre-Trial Statement.

I. Liability Witnesses

1. Debora Chiz Novakowski, 11192 Townline Road, North East, PA 16428.
2. John Stranahan, 24116 Shreve Ridge Road, Union City, PA 16438.
3. Richard Soltan, Suite 600 E, The Curtis Center, 170 S. Independence Mall, W. Philadelphia, PA 19106.
4. Brenda McLahan, Suite 600 E, The Curtis Center, 170 S. Independence Mall, W. Philadelphia, PA 19106.
5. Gloria Jacobi, Suite 600 E, The Curtis Center, 170 S. Independence Mall, W. Philadelphia, PA 19106.
6. Theresa Sipple, c/o U.S. Dept. Of Labor, Occupational Safety and Health

Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

7. Barry Burbage, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

8. Joseph Chmielewski, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

9. Maritza Mercado, 40 Fayette Street, #32, Berth Amboy, NJ 18861.

10. Brenda Claybaugh, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

11. Marcy Levan, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

12. Mark Seitz, 5650 Franklin Road, Fairview, PA 16415.

13. Mark Harman, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

14. Jill Brown, c/o U.S. Dept. Of Labor, Occupational Safety and Health
Administration, Suite 3B-12, 3939 West Ridge Road, Erie, PA 16506.

15. Dale McBrier, McBrier Properties, 3939 West Ridge Road, Erie, PA 16506.

16. Mary Kay Prino, 3717 Brighton Road, Pittsburgh, PA 15212.

17. Herbert L. Murray, Jr., Susan Grimes Associates, Inc., Philadelphia, PA

18. Jean Santo, 2812 Court Avenue, Erie, PA 16506.

19. Burnell King, Jr., Civil Rights Officer, 170 S. Independence Mall, West Sixth &
Walnut Streets, Philadelphia, PA 19106.

20. Any witness in rebuttal.

II. Damage Witnesses

1. Debora Chiz Novakowski
2. Stephen Novakowski, 11192 Townline Road, North East, PA 16438

III. Exhibits

1. Investigative Report in CRC Case No. 02-03-016 completed May 25, 2002.
 - a. Summary of Investigation
 - b. U.S. Dept. Of Labor Formal Complaint of Discrimination with attachments
 - c. Letter of Debora Chiz Novakowski to Burnell King, Jr., Civil Rights Officer, 170 S. Independence Mall, West Sixth & Walnut Streets, Philadelphia, PA 19106
 - d. EEO Counselor's Summary Report, pages B1 through 10
 - e. Investigator's Memorandum, Susan Grimes Associates, Inc., with attachment pages F1 through F53
 - f. Investigator's Memorandum, Susan Grimes Associates, Inc., with attachments pages F1-1 through F1-47
 - g. Witness affidavit, Richard D. Soltan, pages F2-1 through F2-4
 - h. Vacancy announcement No. P801-066, pages F3-1 through F3-5
 - I. Position description, job description for Industrial Hygienist Safety Engineer GS-0690-13 and GS-0803-13 dated October 1, 1999, pages F4-1 through F4-6

- j. U.S. Dept. Of Labor Certificate of Eligibles for Merit Staffing, Industrial Hygienist GS-0690-13 dated May 10, 2001, page F5-1
- k. Letter from Debora Chiz Novakowski to Gladys Stewart dated January 23, 2001 re: Announcement No. PH-01-066 with attachments, pages F6-1 through F6-11
- l. Optional Application for Federal Employment OF-612 Application of Joseph Frank Chmielewski with attachments, pages F7-1 through F7-9
- 2. Deposition transcripts of Depositions of John Stranahan dated April 22, 2003 and January 27, 2006 with Exhibits.
- 3. Deposition transcript of Deposition of Richard Soltan dated February 9, 2006 with Exhibits.
- 4. Transcript of testimony before Administrative Law Judge Polito dated May 20, 2003.
- 5. Defendants' responses to Plaintiff's First Set of Interrogatories dated November 17, 2005.
- 6. Defendants' response to Plaintiff's First Request for Production of Documents with attached documents dated November 17, 2005.
- 7. Defendants' responses to Plaintiff's Second Set of Interrogatories dated December 30, 2005.
- 8. Defendants' responses to Plaintiff's Second Request for Production of Documents with attached documents dated December 30, 2005.
- 9. Secretary's responses to Complainant's First Set of Interrogatories and Request for Production of Documents with attached documents dated January 24, 2003.

10. Letter dated May 18, 2001 to Mary Kay Prino from Gladys Stewart.
11. Letter dated December 26, 1989 to Debora Novakowski from Roberta Kersey, Personnel Staffing Specialist.
12. Calculation of lost wages and future damages to date of Plaintiff's proposed retirement.

IV. Narrative Statement

Debora Chiz Novakowski has been employed by the United States Department of Labor Occupational Safety and Health Administration (OSHA) since July 2, 1990. Ms. Novakowski has been employed for all times relevant to this lawsuit as an Industrial Hygienist GS-690-12, in the Erie Area Office of OSHA in Erie, PA. John Stranahan, was the Area Director of the Erie Area Office.

On or about January 16, 2001, OSHA advertised for a position ultimately entitled Compliance Assistant Specialist in the Erie Area Office to be filled under either of two vacancy announcements, PH-01-066 or PH-01-063, respectively. Announcement PH-01-066 was for the position of Industrial Hygienist, GS-0690-13, and announcement PH-01-063 was for the position of Safety and Occupational Health Specialist, GS-0018-13. Both positions involved a promotion from Ms. Novakowski's grade of GS-12.

Ms. Novakowski applied for the positions in response to both vacancies announcements and was found to qualify for both announced vacancies on a Certificate of Eligibles for each respective announcement. Area Director John Stranahan was charged with the responsibility of interviewing the candidates for the positions as listed on the respective Certificate of Eligibles. Mr. Stranahan conducted the interviews and selected Joseph Chmielewski for the position of

Industrial Hygienist, GS-0690-13 (Compliance Assistant Specialist). Ms. Novakowski was notified by e-mail of the selection on May 21, 2001.

Mr. Stranahan selected Mr. Chmielewski from the Certificate of Eligibles for announcement PH-01-066 Industrial Hygienist.

Mr. Chmielewski was selected for the promotion despite the fact that he was not as qualified as Ms. Novakowski to perform the job. He did not qualify for the position of Safety and Occupational Health Specialist pursuant to announcement PH-01-063. To qualify to be considered for promotion pursuant to announcement PH-01-063, required that the applicant have experience and abilities much more closely related to the duties of the position to be filled than those to qualify for consideration pursuant to PH-01-066.

In addition, Ms. Novakowski received a higher performance rating than Mr. Chmielewski in the one performance requirement of her position as an Industrial Hygienist, GE-12, that related directly to the duties of the position to be filled.

In selecting Mr. Chmielewski, Mr. Stranahan not only did not follow Department of Labor procedures to be followed in making the selection, his decision reflected his bias against and disregard for the interests of female employees in the Erie Area Office. His attitude toward females and bias in favor of males, is evidenced by his long standing tolerance and failure to address a sexually hostile atmosphere in the Erie Area Office.

The selection of Mr. Chmielewski also reflects the bias against females existing in the Philadelphia Region of OSHA as is evidenced by the fact that only white males were selected to fill the Compliance Assistant Specialist position in any office of the Region.

Ms. Novakowski followed the internal Equal Employment Opportunity procedure and filed a complaint of gender and race discrimination with the Philadelphia District Office of Equal

Employment Opportunity Commission. Pursuant to her Complaint, an investigation was conducted. Ms. Novakowski exercised her option to request a hearing before an Equal Employment Opportunity Commission Administrative Judge pursuant to 29 C.F.R. 1614-108(g). A hearing was held before Administrative Judge Francis A. Polito on May 20, 2003. Administrative Law Judge Polito concluded that Ms. Novakowski did not sustain her burden of proof regarding her allegations of gender discrimination. Consequently, Ms. Novakowski exercised her prerogatives under the law and the within lawsuit ensued.

V. Expert Reports

No expert reports have been obtained.

VI. Unusual Legal Issues

There were no unusual legal issues in this case.

VII. Trial

Plaintiff has requested a trial by jury. Plaintiff estimates the trial to last three to five days.

Respectfully submitted,

s/ John R. Linkosky
Attorney for Plaintiff
John R. Linkosky, Esquire
Pa. I.D. No. 66011

Dated: 6/1/06

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Plaintiff's Amended Pre-Trial Statement
has been *electronically filed* this 1st day of June, 2006.

Paul E. Skirtich, Esquire
Assistant U.S. Attorney
United States Department of Justice
U.S. Post Office & Courthouse
700 Grant Street, Suite 400
Pittsburgh, PA 15219

s/ John R. Linkosky
John R. Linkosky, Esquire
Attorney for Plaintiff